

**REMARKS/ARGUMENTS**

Favorable consideration of this application is respectfully requested. Applicant has rewritten claims 1, 6 added new claims 21-36 and canceled claims 5 and 17-20.

Favorable reconsideration of this application is, consequently, earnestly solicited in view of the following remarks.

Applicant notes that a new power of attorney has been filed with the subject application, and directs all future correspondence to be forwarded to applicant's new counsel:

Brian S. Steinberger  
Law Offices of Brian S. Steinberger, P.A.  
Registered Patent Attorneys  
101 Brevard Avenue  
Cocoa, Florida 32922  
Phone (321) 633-5080  
Facsimile (321) 633-9322

The removal of the previous final rejection is acknowledged.

Claims 1-3 were rejected under sec. 103 as being unpatentable over Qualine(QU '166) in view of Gordon '969 and Lanni '111.

QU '166 describes a "tornado underground shelter", title, having a spherical exterior that is located underground. Subject amended independent claim 1 and new independent claims 21 and 30 claim "structure(s)" that are clearly located "above a ground surface....." and includes features such as a "support stand" that clearly is not described, taught, nor suggested by QU '166. The claims also include features not shown, described, or taught by this reference. For example, the "support stand" of claims 1, 21, 33, "plurality of legs" of claims 6, 24, 34, "flat plate(s)/panel(s)" of claims 22, 27, 28, 29, 32, "concrete footer" claims 25, 35 and "conduit..." claims 26 and 36 are not described, taught, nor suggested by this reference.

Gordon '969 describes a "nuclear containment vessels", title, that clearly includes a lower portion that is buried in the ground, and is not located above the ground surface

as is required by the claims. Furthermore, this reference has nothing to do with “catastrophic event survival shelter(s)” which is claimed in all the subject claims, and is therefore nonanalogous prior art. Clearly, Gordon ‘969 does not overcome the deficiencies to QU ‘166 described above.

Lannii ‘111 describes a “bomb shelter”, title, that clearly must be located and buried in the ground, and is not located above the ground surface as is required by the claims. Furthermore, this reference has nothing to do with “catastrophic event survival shelter(s)” located above ground surfaces which is claimed in all the subject claims, and is therefore nonanalogous prior art. Clearly, this reference does not overcome the deficiencies to QU ‘166 and Gordon ‘969 described above.

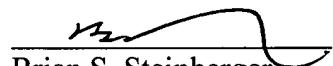
The mere fact that someone in the art can rearrange parts of a reference device to meet the terms of a claim is not by itself sufficient to support a finding of obviousness. The prior art must provide a motivation or reason for someone of ordinary skill in the art, without the benefit of the inventor’s specification to make the necessary changes in the reference device. *Ex parte Chicago Rawhide Mfg. Co.*, 223 USPQ 351, 353 (Bd. Pat. App. & Inter. 1984).

There is no teaching, nor suggestion for modifying the references of record to include all the novel features of the amended claims. Under well recognized rules of the MPEP (for example, section 706.02(j)), the teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant’s disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438(Fed. Cir. 1991).

Applicant contends the references cannot be modified to incorporate the features of subject claims 1-3, 6 and 21-36 without utilizing Applicant's disclosure. The courts have consistently held that obviousness cannot be established by combining the teachings of the prior art to Applicant to produce the claimed invention, absent some teaching, suggestion, incentive or motivation supporting the combination. In re Bond, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990).

In view of the foregoing considerations, it is respectfully urged that claims 1-3, 6 and 21-36 be allowed. Such action is respectfully requested. If the Examiner believes that an interview would be helpful, the Examiner is requested to contact the attorney at the below listed number.

Respectfully Submitted;

  
\_\_\_\_\_  
Brian S. Steinberger  
Registration No. 36,423  
101 Brevard Avenue  
Cocoa, Florida 32922  
Telephone: (321) 633-5080

Date 6/24/04